

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

BURL NEWTON,

*

Plaintiff,

*

**Civil Action No. 12-00175
(JAG)**

v.

*

**EQUIFAX INFORMATION SERVICES, LLC, *
EXPERIAN INFORMATION SOLUTIONS,
INC., TRANS UNION, LLC, and AMERICAN *
EXPRESS,**

*

Defendants.

**MOTION TO DISMISS AND FOR LEAVE FOR PLAINTIFF TO AMEND
COMPLAINT TO NAME THE PROPER PARTY DEFENDANT
ON BEHALF OF AMERICAN EXPRESS**

Defendant American Express (“American Express”) and American Express Bank, FSB (“FSB”), collectively referred to herein as “Defendant,” by counsel, and pursuant to Rules 12(b)(6) and Rule 15 of the Federal Rules of Civil Procedure, respectfully submit this motion to dismiss and for leave for Plaintiff to amend the Complaint to name the proper party defendant on behalf of American Express. Plaintiff and Defendant shall collectively be referred to herein as the “Parties.”

As grounds therefore, the Defendant states as follows:

1. On March 7, 2012, Plaintiff commenced this action by filing a Complaint against Equifax Information Services, LLC (“Equifax”), Experian Information Solutions, Inc. (“Experian”), Trans Union, LLC (“Trans Union”) and “American Express.”

2. “American Express” is a trade name for various American Express entities and as a trade name, American Express is *not* the proper party defendant.

3. Plaintiff granted "American Express" an initial extension of time to and including May 7, 2012, which has been extended to **May 21, 2012**, by agreement of the Parties (ECF No. 15) and order of this Honorable Court (ECF No. 16).

4. Plaintiff's Complaint involves his American Express card account with FSB. Thus, the proper party defendant in this matter is FSB.

5. On May 4, 2012, Defendant's Counsel advised Plaintiff that the proper party defendant involved in this dispute was FSB and requested Plaintiff amend his Complaint. Plaintiff did not respond to Defendant's inquiry on this issue.

6. On May 15, 2012, Defendant emailed Plaintiff a draft consent motion for leave to amend the complaint to name the proper party defendant. Defendant's Counsel also left a phone message on May 16, 2012 regarding Plaintiff's consent. Plaintiff did not respond to Defendant's email or phone message.

7. On May 17, 2012, Defendant emailed Plaintiff a revised motion for leave for Plaintiff to file an amended complaint or motion to dismiss. Plaintiff did not advise of its opposition or if this motion was unopposed.

8. Defendant submits this motion to dismiss and requests the Court leave for Plaintiff to amend the Complaint to substitute "American Express Bank, FSB" for "American Express" in the Complaint.

WHEREFORE, Defendant American Express and American Express Bank, FSB respectfully request this Honorable Court grant Defendant's motion to dismiss and grant Plaintiff leave to amend for Plaintiff to file an Amended Complaint substituting American Express Bank, FSB, for American Express, as the defendant in this

proceeding. Plaintiff shall file the Amended Complaint within five (5) days of the date of the Court's order.

Respectfully submitted,

**American Express and
American Express Bank, FSB**
By Counsel

/s/
Julie Quagliano, VSB No. 37119
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CERTIFICATION OF COUNSEL

The undersigned hereby certifies that she attempted to contact Plaintiff's counsel by several emails and by a phone message to determine Plaintiff's position on amending the complaint to name the proper party defendant. Counsel was unable to reach Plaintiff's counsel to obtain Plaintiff's position.

/s/
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing will be electronically filed on May 21, 2012,
and the following parties will be served through the Court's ECF system:

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/s/

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